

IB 05-318

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

LEUCADIA NATIONAL CORPORATION,
Transferor,

LEVEL 3 COMMUNICATIONS, LLC,
Transferee,

and

WILTEL COMMUNICATIONS, LLC,
Licensee,

Application for Consent to Transfer of
Control of a Jointly-Held Cable Landing
License for the China U.S. Cable Network

File No. SCL-T/C-20051102-_____

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Federal Communications Commission
Office of Secretary

APPLICATION—
STREAMLINED PROCESSING REQUESTED

Pursuant to the Cable Landing License Act and Section 1.767 of the Commission's rules, Leucadia National Corporation ("Leucadia," FRN No. 0006929319), and Level 3 Communications, LLC ("Level 3," FRN No. 0008085136), request that the Commission consent to the transfer of control to Level 3 of the jointly-held cable landing license of WilTel Communications, LLC ("WilTel," FRN No. 0003716511) (collectively with Leucadia and Level 3, "Applicants"), for the China-U.S. Cable Network ("CUSCN").¹ Level 3 and its affiliates have

¹ See "An act relating to the Landing and Operation of Submarine Cables in the United States," codified at 47 U.S.C. §§ 34-39 ("Cable Landing License Act"); Executive Order No. 10,530, codified at 3 C.F.R. 189 (1954-1958), reprinted in 3 U.S.C. § 301 app. (1988); 47 C.F.R. § 1.767; *AT&T Corp. et al., Cable Landing License*, FCC File No. SCL-LIC-19980309-00005, 13 FCC Rcd. 16,232 (Int'l Bur. 1998) ("*CUSCN License*").

entered into an agreement with Leucadia and its affiliates to acquire substantially all of the telecommunications businesses of WilTel by purchasing all of the outstanding shares of WilTel's immediate parent company, WilTel Communications Group, Inc. ("WCG") (collectively, "Proposed Transaction").² This consolidated application qualifies for presumptive streamlined processing under Section 1.767(k)(2) of the Commission's rules, and the Applicants therefore request such streamlined processing.³

Commission consent for this transfer will serve the public interest and poses no competitive or other public interest concerns. Applicants request streamlined processing for this application, as neither Level 3 nor any of its affiliates is a foreign carrier with market power in China, the destination markets served by the CUSCN.

Part I of this application describes the Applicants and the Proposed Transaction. Part II provides the information required of the Applicants by Section 1.767 of the Commission's rules. In part III, the Applicants explain how this application qualifies for streamlined processing.

I. BACKGROUND

A. Parties to the Proposed Transaction

Leucadia National Corporation: Leucadia is a New York corporation operating as a holding company engaged in telecommunications, banking and lending, and other businesses. Leucadia's shares are publicly traded on the New York Stock Exchange. It is the ultimate sole owner of WCG and WilTel.

² Concurrent with this application, the Applicants have applied for Commission consent to transfer to Level 3 WilTel's international Section 214 authorization and domestic common-carrier transmission lines, as well as the international Section 214 authorization, terrestrial wireless licenses, and satellite earth station authorizations of WilTel's subsidiary, Vyvx, LLC ("Vyvx").

³ See 47 C.F.R. § 1.767(k)(2).

WilTel Communications Group, LLC: WCG is a Nevada limited-liability company that acts as a holding company engaged in the business of telecommunications. WCG is an indirect wholly-owned subsidiary of Leucadia.

WilTel Communications, LLC: WilTel is a Delaware limited-liability company headquartered in Tulsa, Oklahoma, and the wholly-owned, operating subsidiary of WCG. WilTel is a leading provider of customized communications services—including voice, data, and IP-based services—for enterprise and carrier customers. WilTel operates or manages a next-generation fiber-optic network connecting more than 125 cities in the United States and extending internationally to Europe, Mexico, and the Pacific Rim. WilTel is a non-dominant carrier that holds authority to provide intrastate interexchange telecommunications services in all 50 states and competitive local exchange telecommunications services in fewer than five states. WilTel holds a single international Section 214 authorization granted by the Commission.⁴ WilTel also holds a joint interest in the cable landing license for the CUSCN, which it seeks to

⁴ See FCC File Nos. ITC-214-19970115-00025; ITC-T/C-20020927-00480.

transfer to Level 3.⁵ WilTel also holds a joint interest in the cable landing license for the Japan-U.S.-Cable Network ("JUSCN"), which it seeks to relinquish.⁶

Level 3 Communications, LLC: Level 3 is a Delaware limited-liability company headquartered in Broomfield, Colorado, and engages in the provision of domestic and international communications and information services. Level 3 is an indirect, wholly-owned subsidiary of Level 3 Communications, Inc., a Delaware corporation headquartered in Broomfield, Colorado, and a global communications and information services company that offers a wide range of communications services over its 23,000 mile broadband fiber optic network, including IP-based services, broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. Level 3 Communications, Inc., is a publicly traded company listed on NASDAQ (symbol: LVLT).

⁵ See *Actions Taken Under the Cable Landing License Act, Public Notice*, 18 FCC Rcd. 22,116 (Int'l Bur. 2003) ("*WilTel-Leucadia*") (consenting to the transfer of control of WilTel's jointly-held CUSCN cable landing license from the shareholders of WCG to Leucadia); *Actions Taken Under the Cable Landing License Act, Public Notice*, 17 FCC Rcd 23,808 (Int'l Bur. 2002) (granting *nunc pro tunc* authority for *pro forma* transfer of control of the jointly-held CUSCN cable landing license held by Williams Communications, LLC ("WCL"), from Williams Communications Group, Inc. ("Williams") to Williams Communications Group, Inc., Debtor-in-Possession ("Williams-DIP"), and granting authority to transfer control of WCL's jointly-held CUSCN cable landing license from Williams-DIP to WCG); *International Authorizations Granted, Public Notice*, 16 FCC Rcd. 9834 (Int'l Bur. 2001) (consenting to the *pro forma* transfer of control of WCL's jointly-held CUSCN cable landing license from The Williams Companies to its shareholders); *Williams Communications, Inc., et. al, Memorandum Opinion and Order*, 15 FCC Rcd. 19,610 (2000) (granting consent to transfer control of the jointly-held CUSCN cable landing license held by SBCI-Pacific Networks, Inc., to Williams Communications, Inc.). WCL was renamed WilTel in 2003.

⁶ See *AT&T Corp. et al, Cable Landing License*, FCC File No. SCL-LIC-19981117-00025, 14 FCC Rcd. 13,066 (1999) ("*JUSCN License*"). On October 20, 2005, WilTel applied for Commission consent to modify the cable landing license for the JUSCN and to relinquish WilTel's joint interest in that license, as WilTel holds equity and voting interests of less than 5 percent in the JUSCN and does not own or control a JUSCN cable station. See 47 C.F.R. §§ 1.767(h) (requiring only that parties owning or controlling a 5-percent-or-greater equity interest in an undersea cable system or owning or controlling a cable station need be cable landing licensees), (m)(2) (specifying relinquishment procedures).

B. The Proposed Transaction

On October 30, 2005, Leucadia and its affiliates and Level 3 and its affiliates entered into a Stock Purchase Agreement ("Agreement") to allow Level 3 to acquire all of the outstanding shares of WCG and, therefore, control of WilTel and its Vyvx subsidiary, including: (1) WilTel's joint interest in the cable landing license for the China-U.S. Cable Network; (2) WilTel's international Section 214 authorization for global facilities-based and global resale services; (3) WilTel's foreign subsidiaries in Canada, Japan, the Netherlands, and the United Kingdom; (4) WilTel's domestic common carrier transmission lines; (5) Vyvx's international Section 214 authorization; (6) Vyvx's satellite earth station authorizations; and (7) Vyvx's terrestrial wireless licenses.⁷

Level 3's acquisition of WilTel will strengthen and expand Level 3's customer service offerings and networks. The acquisition also will allow Level 3 to compete more effectively with its competitors. The Proposed Transaction raises no competition issues. Level 3 will gain a new but small interest in the CUSCN which will not provide Level 3 with any competitive leverage within the consortium-based CUSCN or on the U.S.-China route. Accordingly, approval of this transfer application will serve the public interest, convenience, and necessity.

II. COMPLIANCE WITH SECTION 1.767 OF THE COMMISSION'S RULES

In accordance with Section 1.767 of the Commission's rules and Executive Order No. 10,530, the Applicants submit the following information:

(1) Applicants' Names, Addresses and Telephone Numbers⁸

The names, addresses, and telephone numbers of the Applicants are:

⁷ The Applicants have attached a copy of the Agreement as Exhibit A to this application.

⁸ See 47 C.F.R. § 1.767(a)(1), (11)(i).

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(2) Applicants' Incorporations⁹

Leucadia is a corporation organized under the laws of the State of New York. Level 3 is a limited liability company organized under the laws of the State of Delaware.

(3) Contact Information¹⁰

Correspondence regarding this application should be addressed to:

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⁹ See 47 C.F.R. § 1.767(a)(2), (11)(i).

¹⁰ See 47 C.F.R. § 1.767(a)(3), (11)(i).

(4) **System Descriptions**¹¹

The CUSCN system description has not changed materially since the original application and landing point notification were filed and approved by the Commission.¹²

(5) **Landing Points**¹³

The landing points of the CUSCN have not changed materially since the original application, landing points notification, and related amendments were filed and approved by the Commission.¹⁴

(6) **Regulatory Status**¹⁵

The facts supporting the non-common-carrier status of the CUSCN and the Commission's regulatory classification thereof have not changed materially since the original application was filed and approved by the Commission.¹⁶

(7) **Cable Ownership Information**¹⁷

The current ownership and control of the CUSCN do not differ materially from the description thereof contained in the original application, and in subsequent amendments and notifications, all since approved or accepted by the Commission.¹⁸

¹¹ See 47 C.F.R. § 1.767(a)(4).

¹² See *CUSCN License*, 13 FCC Rcd. at 16,233 ¶ 4; *Non-Streamlined International Section 214, Cable Landing License and Section 310(b)(4) Applications Accepted for Filing, Public Notice*, FCC File No. SCL-LPN-19981009-00021, Report No. TEL-00030NS (Nov. 13, 1998) ("*CUSCN LPN*").

¹³ See 47 C.F.R. § 1.767(a)(5).

¹⁴ See *CUSCN LPN*.

¹⁵ See 47 C.F.R. § 1.767(a)(6).

¹⁶ See *CUSCN License*, 13 FCC Rcd. at 16,234-38 ¶¶ 7-17.

¹⁷ See 47 C.F.R. § 1.767(a)(7).

¹⁸ See *CUSCN License*, 13 FCC Rcd. at 16,233 ¶ 5, 16238 ¶ 18; FCC File No. SCL-LIC-19980309-00005.

(8) **Corporate Control and Affiliate Information**¹⁹

Level 3 submits the following information specified in Sections 63.18(h)-(k) and (o) of the Commission's rules:

(i) **Certification Regarding Ownership, Citizenship, Principal Businesses, and Interlocking Directorates**²⁰

By its signature below, Level 3 certifies to the following. Level 3 is a wholly-owned subsidiary of Level 3 Financing, Inc. ("Level 3 Financing"), a Delaware corporation engaged in the business of providing managed information technology infrastructure services across a variety of platforms. Level 3 Financing's address is 1025 Eldorado Boulevard, Broomfield, Colorado 80021. Level 3 Financing, in turn, is a wholly owned subsidiary of Level 3 Communications, Inc., a Delaware corporation which offers a wide range of communications services over its 23,000-mile broadband fiber optic network, including IP-based services, broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. The address of Level 3 Communications, Inc., is 1025 Eldorado Boulevard, Broomfield, Colorado 80021. Three parties hold a ten-percent-or-greater direct or indirect interest in Level 3 Communications, Inc:

- (1) Southeastern Asset Management, Inc. ("SAM"): SAM is a Tennessee corporation engaged in the business of providing investment advisory services and located at 6410 Poplar Avenue, Suite 900, Memphis, Tennessee 38119. SAM holds sole or shared voting rights for 22.15 percent of outstanding shares of Level 3 Communications, Inc., that are otherwise owned by other entities for whom SAM acts as an investment advisor, including shared voting rights for the shares owned

¹⁹ See 47 C.F.R. § 1.767(a)(8), (11)(i).

²⁰ See 47 C.F.R. § 63.18(h).

by Longleaf Partners Fund ("LPF"). Other than LPF, none of the other owners of outstanding shares of Level 3 Communications, Inc., whose shares are voted by SAM owns a 10-percent-or-greater direct or indirect interest in Level 3 Communications, Inc.

- (2) Longleaf Partners Fund: LPF is a Massachusetts business trust engaged in the business of investment and located, in care of SAM, at 6410 Poplar Avenue, Suite 900, Memphis, Tennessee 38119. LPF owns 11.8 percent of the outstanding shares of Level 3 Communications, Inc., and shares with SAM the voting rights for those shares.
- (3) Legg Mason, Inc. ("Legg Mason"): Legg Mason is a Maryland corporation engaged, through its subsidiaries, in providing financial services, including investment advisory services, securities brokerage services, and capital markets services. Legg Mason is located at 100 Light Street, Baltimore, Maryland 21202. In aggregate, two subsidiaries of Legg Mason vote 10.776 percent of outstanding shares of Level 3 Communications, Inc., that are otherwise owned by other entities for whom the subsidiaries act as an investment advisor. These subsidiaries are: (1) Legg Mason Capital Management, Inc. ("LMCM"), which holds a 5.764 percent voting interest, and (2) LMM, LLC ("LMM"), which holds a 5.012-percent voting interest. LMCM is a wholly-owned subsidiary of Legg Mason, while LMM is 50-percent owned by Legg Mason.

None of these three parties holding a ten-percent-or-greater direct or indirect interest in Level 3 Communications, Inc., holds a seat on the board of directors of Level 3 Communications, Inc.

The following individuals are officers or directors of Level 3 and officers or directors of foreign carriers:

- Brian Hedlund, who is an Assistant Secretary of Level 3, is also a Secretary of Level 3 Communications (Austria) Limited, a Secretary of Level 3 Communications (Denmark) Limited, a Secretary of Level 3 Communications Ltd. (Ireland), and a Secretary of Level 3 Communications Limited (United Kingdom);
- Andrew E. Ottinger, Jr., who is Vice President of Level 3, is also a Secretary of Level 3 Communications Limited (UK) and an Assistant Secretary of Level 3 Communications Ltd. (Ireland); and
- Robert M. Yates, who is a Senior Vice President and Assistant General Counsel of Level 3, is also is a Director of Level 3 Communications (Austria) Limited, a Director of Level 3 Communications S.A. (Belgium), a Director of Level 3 Communications (Denmark) Limited, a Director of Level 3 Communications S.A.S. (France), a Director of Level 3 Communications GmbH (Germany), a Director of Level 3 Communications Limited (Ireland), a Director of Level 3 Communications S.R.L. (Italy), a Director of Level 3 Communications B.V. (the Netherlands), a Director of Level 3 Communications SLU (Spain), a Director of Level 3 Communications A.B. (Sweden), and a Director of Level 3 Communications Limited (United Kingdom).

(ii) Certification Regarding Foreign Carrier Status and Foreign Affiliation²¹

By its signature below, Level 3 certifies that it is not a foreign carrier. Level 3 further certifies that, upon consummation of the transactions contemplated in the Agreement, it will be affiliated with foreign carriers in Austria, Belgium, Canada, the Czech Republic, Denmark, France, Germany, Ireland, Italy, Japan, the Netherlands, Poland, Spain, Sweden, Switzerland, and the United Kingdom.

(iii) Certification Regarding Destination Markets²²

By its signature below, Level 3 certifies that: (1) it is not a foreign carrier in China, the CUSCN's foreign destination market; (2) it does not and—following the consummation of the

²¹ See 47 C.F.R. §§ 1.767(a)(8), 63.18(i).

²² See 47 C.F.R. §§ 1.767(a)(8), 63.18(j).

Proposed Transaction—will not control a foreign carrier in China; (3) no entity controlling a foreign carrier in China owns more than twenty-five percent (25%) of Level 3 or controls Level 3; and (4) no foreign carriers in China (or parties that control foreign carriers in China) own, in the aggregate, more than twenty-five percent (25%) of Level 3 and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.

(iv) Demonstration Regarding WTO Status, Market Power, and the Effective Competitive Opportunities Test²³

As Level 3 has not made any affirmative certifications in response to Sections 1.767(a)(8) and 63.18(j) of the Commission's rules, it need not make a showing under Section 63.18(k) of the Commission's rules. The CUSCN does not connect the United States with a destination market in which Level 3 is or will be, or is affiliated with or will be affiliated with (following the consummation of the Proposed Transaction), a foreign carrier, much less a foreign carrier with market power.

(v) Certification Regarding the Anti-Drug Abuse Act of 1988²⁴

By its signature below, Level 3 certifies that it is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

(9) Certification Regarding Compliance with Routine Conditions²⁵

By its signature below, Level 3 certifies that it accepts and will abide by the routine conditions specified in Section 1.767(g) of the Commission's rules.

²³ See 47 C.F.R. §§ 1.767(a)(8), 63.18(k).

²⁴ See 47 C.F.R. §§ 1.767(a)(8), 1.2001-1.2003, 63.18(o).

²⁵ See 47 C.F.R. § 1.767(a)(9), (11)(i).

III. REQUEST FOR STREAMLINED PROCESSING

The Applicants request streamlined processing for this application, as the application qualifies for such processing under Sections 1.767(j) and (k)(1) of the Commission's rules.²⁶ Pursuant to Section 1.767(k)(1), Level 3 certifies that neither it nor its any of its affiliates is a foreign carrier in China, the destination market served by the CUSCN. Thus, the application is eligible for streamlined processing.²⁷ Moreover, the Applicants have satisfied the procedural requirements for streamlined processing by serving the Executive Branch agencies as required by Section 1.767(j) of the Commission's rules.²⁸

²⁶ See 47 C.F.R. §§ 1.767(j), (k)(1).

²⁷ See *id.*

²⁸ See 47 C.F.R. § 1.767(j).

CONCLUSION

For the foregoing reasons, the Applicants respectfully request that the Commission grant this application for consent to transfer control of WilTel's jointly held cable landing license for the CUSCN from Leucadia to Level 3.

Respectfully submitted,

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2 November 2005

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CONCLUSION

For the foregoing reasons, the Applicants respectfully request that the Commission grant this application for consent to transfer control of WilTel's jointly held cable landing license for the CUSCN from Leucadia to Level 3.

Respectfully submitted,

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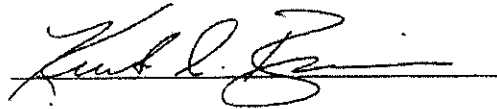
CERTIFICATE OF SERVICE

I, Kent D. Bressie, hereby certify that consistent with Section 1.767(j) of the Commission's rules, 47 C.F.R. § 1.767(j), I have served copies of the foregoing Application by hand delivery on this 2nd day of November 2005, to the following:

Ambassador David Gross
U.S. Coordinator
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A handwritten signature in black ink, appearing to read 'Kent D. Bressie', is written over a horizontal line.

Kent D. Bressie